



Citation: *LA v Canada Employment Insurance Commission*, 2024 SST 297

Social Security Tribunal of Canada Appeal Division

Extension of Time and Leave to Appeal Decision

Applicant: L. A.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated January 15, 2024
(GE-23-3302)

Tribunal member: Stephen Bergen

Decision date: March 22, 2024

File number: AD-24-153

Decision

[1] I am granting the extension of time to apply to the Appeal Division. However, I am refusing leave (permission) to appeal. The appeal will not proceed.

Overview

[2] L. A. is the Applicant. I will call her the Claimant because this application concerns her claim for Employment Insurance (EI) benefits.

[3] On August 9, 2023, the Applicant applied for family caregiver benefits to care for her mother. She claimed 11 weeks and asked that they begin earlier, on January 29, 2023. The Respondent, the Canada Employment Insurance Commission (Commission) paid her 6 weeks before it realized that she had an earlier claim in which she had already received the maximum of 15 weeks of family caregiver benefits to look after her mother. The Commission informed the Claimant that she was not eligible for caregiver benefits from January 30, 2023, and told her she would have to pay back six weeks of benefits.

[4] The Claimant disagreed and asked the Commission to reconsider. In response, the Commission changed its decision to show that the Claimant was only disentitled from January 29, 2023, to March 18, 2023. It did not otherwise change its decision that she was not entitled to the additional weeks of family caregiver benefits she received in early 2023.

[5] The Claimant appealed to the General Division, but the General Division dismissed her appeal. She is now asking for permission to appeal.

[6] I am refusing permission to appeal. There is no arguable case that the General Division made an error of jurisdiction by refusing to consider a write-off of the Claimant's debt.

Issues

[7] The issues in this appeal are:

- a) Was the application to the Appeal Division late?
- b) Should I extend the time for filing the application?
- c) Is there an arguable case that the General Division made an error of jurisdiction by not considering a write-off of the Claimant's debt?

Analysis

The application was late

[8] The deadline to apply for leave to appeal a decision of the General Division is 30 days from the date that it is communicated in writing to the appellant.¹

[9] The Claimant admits in her application that she received the General Division decision on January 15, 2024. That means her application deadline was February 14, 2024. Her Application to the Appeal Division was received on February 21, 2024.

[10] The application is seven days late.

I am extending the time for filing the application

[11] When deciding whether to grant an extension of time, I have to consider whether the Claimant has a reasonable explanation for why the application is late.²

[12] The Claimant explained that the General Division suggested she ask the Commission to write off her debt and that she was preoccupied with gathering information to support her request.

[13] Given that her application is only a week late, I accept her explanation as reasonable.

[14] I am granting her an extension to apply for leave.

¹ See section 57(1)(a) of the Department of Employment and Social Development Act (DESDA).

² It says this in section 27(2) of the *Social Security Tribunal Rules of Procedure*.

I am not giving the Claimant permission to appeal

General Principles

[15] For the Claimant's application for leave to appeal to succeed, her reasons for appealing must fit within the "grounds of appeal." The grounds of appeal identify the kinds of errors that I can consider.

[16] I may consider only the following errors:

- a) The General Division hearing process was not fair in some way.
- b) The General Division did not decide an issue that it should have decided. Or, it decided something it did not have the power to decide (error of jurisdiction).
- c) The General Division based its decision on an important error of fact.
- d) The General Division made an error of law when making its decision.³

[17] To grant this application for leave and permit the appeal process to move forward, I must find that there is a reasonable chance of success on one or more grounds of appeal. Other court decisions have equated a reasonable chance of success to an "arguable case."⁴

Error of jurisdiction

[18] The Claimant selected the ground of appeal that is concerned with an error of jurisdiction. In her explanation, she says that the General Division member said that he did not have authority to write off her overpayment.

[19] I understand the Claimant to be arguing that the General Division should have decided whether she was entitled to have her overpayment written off, and that it failed to exercise its jurisdiction by refusing to decide the issue.

³ This is a plain-language version of the grounds of appeal. The full text is in section 58(1) of the *Department of Employment and Social Development Act* (DESDA).

⁴ See *Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41; and *Ingram v Canada (Attorney General)*, 2017 FC 259.

[20] However, there is no arguable case that the General Division refused to exercise its discretion. The General Division was correct not to consider a write-off of the overpayment.

[21] The General Division only has jurisdiction to consider issues arising from a reconsideration decision.⁵ The reconsideration decision before the General Division did not consider whether the Claimant's debt should be written off. Nor could it. The law prohibits the Commission from reconsidering a decision respecting the write-off of a debt.⁶

[22] As the General Division informed the Claimant, her only option is to ask the Commission to write off the debt or to speak with the Canada Revenue Agency (CRA) about payment arrangements.

[23] At the same time, the Claimant may wish to discuss the amount of her debt with the Commission because it may have made a calculation error. The Commission told the Claimant that she was paid six weeks between January 29, 2023, and March 18, 2023, to which she was not entitled.⁷ The Claimant's weekly benefit rate is \$187.00.⁸ Six weeks of benefits at \$187.00 per week does not equal the Notice of Debt amount of \$1968.00.

[24] To be clear, I am not making any decision on whether the overpayment in the October 21, 2023, Notice of Debt is in the correct amount.

[25] This decision concerns only the Claimant's application to appeal the General Division decision. The General Division dismissed the Claimant's appeal of a Commission decision that she was not entitled to caregiver benefits between January 29, 2023, and March 18, 2023.

⁵ See section 113 of the *Employment Insurance Act* (EI Act).

⁶ See section 112.1 of the EI Act.

⁷ See GD3-30.

⁸ See GD3-22.

Conclusion

[26] I am granting the Claimant an extension of time to apply to the Appeal Division, but I am refusing leave to appeal. This means that the appeal will not proceed.

Stephen Bergen
Member, Appeal Division